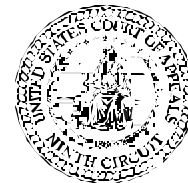




Cathy A. Catterson
Clerk of Court

Office of the Clerk
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
95 Seventh Street
Post Office Box 193939
San Francisco, California 94119-3939



(415) 556-9800

August 2000

**Notice and Opportunity for Comment on
Proposed Amendments to the Circuit Rules**

Comments are invited on the following proposed amendments to the Rules and Advisory Committee Notes of the United States Court of Appeals for the Ninth Circuit. **New or amended language is in bold print.** Comments should be submitted to Cathy A. Catterson, Clerk of Court/Circuit Court Executive, no later than **September 25, 2000.**

CIRCUIT RULE 4-1

COUNSEL IN CRIMINAL APPEALS

This rule applies to appeals in categories of cases listed in 18 U.S.C. § 3006A.

* * * *

(c) Withdrawal of Counsel After Filing the Notice of Appeal

* * * *

(5) An affidavit or signed statement from the defendant showing that the defendant has been advised of his or her rights with regard to the appeal and expressly stating that the defendant wishes to dismiss the appeal voluntarily.

Any motion filed pursuant to this section not accompanied by defendant's affidavit or signed statement shall set forth the reasons for such omission.

~~Alternatively, on or before the due date for the opening brief, appointed counsel shall file a brief which complies with the procedures set forth in Anders v. California, 386 U.S. 738 (1967) and United States v. Griffy, 895 F.2d 561 (9th Cir. 1990), accompanied by proof of service on the defendant.~~

(6) Alternatively, if after conscientious review of the record

appointed counsel determines the appeal is frivolous, on or before the due date for the opening brief, appointed counsel shall file a separate motion to withdraw and an opening brief that complies with the procedures set forth in *Anders v. California*, 386 U.S. 738 (1967) and *United States v. Griffy*, 895 F.2d 561 (9th Cir. 1990), accompanied by proof of service on the defendant. The cover of the opening brief shall state that the brief is being filed pursuant to *Anders v. California*.

To facilitate this Court's independent review of the district court proceedings, counsel shall designate all appropriate reporter's transcripts, including but not limited to complete transcripts for the plea hearing and sentencing hearings, and shall include the transcripts in the excerpts of record. Counsel are advised to consult Ninth Circuit Rule 30-1.

When an appointed attorney has properly moved for leave to withdraw pursuant to *Anders* and has included all appropriate reporter's transcripts, this Court will establish a briefing schedule permitting the defendant to file a pro se supplemental opening brief raising any issues that defendant wishes to present. The order will also direct appellee by a date certain either to file its answering brief or notify the court by letter that no answering brief will be filed.

* * * *

Purpose: To clarify (1) counsel's obligations under <u><i>Anders v. California</i></u> ; and (2) the Court's treatment of such briefs.

CIRCUIT RULE 9-1

RELEASE IN CRIMINAL CASES

9-1.1 Release Pending Conviction

* * * *

(b) The appellee shall file a response to appellant's memorandum within 7 days of receipt thereof. ~~The appeal shall be decided promptly after submission of the appellee's response.~~

(c) Appellant may file an optional reply within 3 days of receipt of appellee's response to the bail motion. The appeal shall be decided

promptly.

9-1.2 Release Pending Appeal

*** * * ***

(d) A movant for bail pending appeal may file an optional reply within 3 days of receipt of the government's response to the bail motion.

(e) If the appellant is on bail at the time the motion is filed in this court, that bail will remain in effect until the court rules on the motion.

Purpose: To conform Circuit Rule 9 to FRAP 27(a)(4) and permit the filing of a reply to a response.

**PROPOSED ADDITION TO
CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 25-2**

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***Notice of Delay:* If a party believes that the court has unduly delayed taking action in an appeal or petition, the party is encouraged to communicate this concern to the court. Such notice can be accomplished by a letter to the Clerk identifying the case and the nature of the delay. The clerk will forward the letter to the appropriate court official or panel. Generally, such a letter would be appropriate if:**

- (1) a motion has been pending for longer than four months;**
- (2) the parties have not received notice of oral argument or submission on the briefs within fifteen months after the completion of briefing;**
- (3) a decision on the merits has not been issued within nine months after submission;**
- (4) the mandate has not issued within forty-five days after the time to file a petition for rehearing has expired;**
- (5) a petition for rehearing has been pending for longer than six months; or**
- (6) in any other instance when in the judgment of the party, the court has not taken action within a reasonable period. Litigants are advised, however, that the complexity of a given matter may preclude court action**

within the noted guidelines.

Purpose: Apprise the bar of the mechanism to address a delay in proceedings.

**PROPOSED
CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 31-2.2**

If a party files a motion for a first extension of time to file a brief on or before the due date for the brief, and the court does not rule on the motion until shortly before the due date or after the due date for the brief, the court ordinarily will grant some additional time to file the brief even if the court does not grant the motion in full. Multiple motions for extension of time to file a brief are disfavored, however, and the court may decline to grant relief if a successive motion fails to demonstrate diligence and substantial need.

If the court does not act on a motion for extension of time to file a brief before the requested due date, the court nonetheless expects the moving party to file the brief within the time requested in the motion. The brief should be accompanied by a letter stating that a motion for an extension of time is pending.

Purpose: Provide litigants with a policy statement regarding the court's treatment of motions for extension of time.
